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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/754,497

01/12/2004

Sen'ichi Onoda

2003\_1845A

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04/26/2010

WENDEROTH, LIND & PONACK, L.L.P.

1030 15th Street, N.W.,

Suite 400 East

Washington, DC 20005-1503

EXAMINER

TODD, GREGORY G

ART UNIT

PAPER NUMBER

2457

NOTIFICATION DATE

DELIVERY MODE

04/26/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ddalecki@wenderoth.com

coa@wenderoth.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/754,497	<b>Applicant(s)</b> ONODA ET AL.	
	<b>Examiner</b> GREGORY G. TODD	<b>Art Unit</b> 2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 7-15, 17, 18, 23, 39 and 44-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-15, 17, 18, 23, 39 and 44-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/30/08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This office action is in response to applicant's amendment filed, 05 February 2009, of application filed, with the above serial number, on 12 January 2004 in which claims 7-15, 17, 18, 23, and 39 have been amended, claims 1-6 16, 19-22, 24-38, and 40-43 have been cancelled, and claims 44-47 have been added. Claims 7-15, 17, 18, 23, 39, and 44-47 are pending in the application.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 44, 46, 47, 7-15, 17, 18, 23, and 39 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per Claim 47, The claims are directed to "a computer-readable recording medium". According to the October 26, 2005 Interim Guidelines for Examining Patent Applications, signal claims are ineligible for patent protection because they do not fall within the four statutory classes of § 101. (See [http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101\\_20051026.p](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf)  
[df](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf)). The specification (see par. 26 of published specification) provides guidelines defining the medium to include a transmission channel, thus the medium broadly

encompasses a signal medium without the use of terminology such as a “non-transitory computer-readable recording medium”.

As per Claims 44, 46, 7-15, 17, 18, 23, and 39, The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material per se.

The claim scope is undetermined as a reasonable interpretation of the claims can refer to embodiments which are just software. The server and client apparatus includes various units wherein the units are performing software steps.

In order to expedite a comprehensive examination of the instant application, the claims rejected under 35 U.S.C.101 (non-statutory) above, are further rejected as set forth below in anticipation of applicant amending these claims to place them within the admissible statutory categories of invention.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7-15, 17, 18, 23, 39, and 44-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Negawa (hereinafter "Negawa", 7,055,030) in view of Day (hereinafter "Day", 7,222,185).

As per Claim 44, Negawa teaches a content usage management system comprising: a client apparatus that reproduces distributed content (at least col. 5:34-49; clients); and at least one distribution server (at least col. 5:29-32; multicast server), wherein said client apparatus includes a usage control data receiving unit operable to receive usage control data including a key used for reproduction of the distributed content from said at least one distribution server, and a reproduction unit operable to reproduce the distributed content using the usage control data (at least col. 7:37-62; client control unit processing keys for decryption), and said at least one distribution server includes a confirmation unit operable to confirm whether the content distributed to said client apparatus is content having a limited number of reproduction times or not (at least col. 6:1-10; eg. quantity based subscription), and a usage control data distribution unit operable to

(a) distribute the usage control data by a unicast distribution method where the usage control data is distributed in response to a request from said client apparatus (at least col. 7:12-21; 12:19-23; 14:45-15:5; unicast of key to client individually), and

(b) distribute the usage control data to a plurality of client apparatuses including said client apparatus by a multicast distribution method where the usage control data is distributed to said plurality of client apparatuses simultaneously at a predetermined

distribution time (at least col. 7:12-21; 12:19-23; 14:45-15:5; multicast of key to plurality of clients).

Negawa fails to explicitly teach distributing the content by unicast or multicast based on a characteristic of the content such as limited reproduction. However, the use and advantages for using such a system is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Day. Day, in a similar multicast distribution server field, teaches selecting the transmission mode of content to be by unicast or multicast based upon the content distribution characteristic (at least col. 7:13-21). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the use of Day's selective distribution with Negawa, as Negawa teaches unicasting or multicasting usage control keys to clients as a means of being more efficient, and it would be obvious to unicast or multicast such content as with Day based on content characteristics as relatively popular or free content would be more efficient to distribute via multicasting while less popular content or limited would be more efficient to distribute via unicasting (at least col. 7:39-60).

As per Claim 7. The content usage management system according to claim 44, wherein said at least one distribution server further includes:

a distribution method determination rule holding unit operable to hold a distribution method determination rule, the distribution method determination rule indicating a rule to determine whether the usage control data of the content is distributed by the multicast distribution method or the unicast distribution method according to whether or not the number of reproduction times of the content is limited (at least col. 7:12-21; 14:45-15:5);

and

a distribution method determination unit operable to determine the distribution method with reference to the distribution method determination rule corresponding to an attribute of the content (at least col. 7:12-21; 14:45-15:5), wherein said usage control data distribution unit distributes the usage control data according to the distribution method determined by said distribution method determination unit (at least col. 7:12-21; 14:45-15:5).

As per Claim 8. The content usage management system according to claim 7, further comprising a content server for distributing contents to the client apparatus, wherein said at least one distribution server further includes:

a method information generation unit operable to generate information indicating the determined distribution method; and a method information sending unit operable to send the generated information indicating the distribution method to said content server by associating the generated information with the contents to be distributed, wherein said content server distributes the contents including the information indicating the distribution method (at least col. 7:12-21; 14:45-15:5; col. 16:43-58).

As per Claim 9. The content usage management system according to claim 8, wherein said client apparatus includes: a content obtainment unit operable to obtain a content from said content server; a distribution method identification unit operable to extract the information indicating the distribution method from the obtained content and identify the distribution method for the usage control data corresponding to the content based on

the extracted information; and a usage control data obtainment unit operable to obtain the usage control data from said distribution server according to the identified distribution method (at least col. 7:12-21; 14:45-15:5; col. 16:43-58).

As per Claim 10. The content usage management system according to claim 9, wherein said usage control data obtainment unit (1) requests said usage control data distribution unit to distribute the usage control data corresponding to the obtained content when the identified distribution method is the unicast distribution method, and (2) waits until a predetermined distribution time at which the usage control data corresponding to the content is distributed when the identified distribution method is the multicast distribution method (at least col. 7:12-21; 14:45-15:5; col. 16:43-58).

As per Claim 13. The content usage management system according to claim 44, wherein said at least one distribution server including said usage control data distribution unit further includes an, authentication unit to authenticate said client apparatus as an authorized user when said client apparatus is recognized as a previously registered client apparatus through communication with each client apparatus, and said usage control data distribution unit distributes the usage control data only to said client apparatus recognized as an authorized user (at least col. 11:1-40; encryption for authorization).

As per Claim 14. The content usage management system according to claim 13, wherein said authentication unit authenticates said client apparatus by a PKI method (at least col. 11:1-40; PKI).



As per Claim 15. The content usage management system according to claim 13, wherein said authentication unit authenticates said client apparatus by a common key method (at least col. 11:1-40; key).

As per Claim 17. The content usage management system according to claim 44, further comprising a user management server that distributes a predetermined decryption key only to a previously registered user, wherein said at least one distribution server includes a control data encryption unit operable to encrypt the usage control data determined to be distributed by the multicast distribution method, using a key corresponding to the predetermined decryption key, said usage control data distribution unit distributes the encrypted usage control data (at least col. 11:1-40).

As per Claim 18. The content usage management system according to claim 44, further comprising a content server which distributes only the content whose usage control data is determined to be distributed by the unicast distribution method, wherein said usage control data distribution unit distributes only the usage control data of the content to be distributed by said content server (at least col. 7:12-21; 14:45-15:5; col. 16:43-58).

As per Claim 23. The content usage management system according to claim 44, wherein the usage control data further includes a use condition for using content, and said client apparatus further includes a reproduction control unit operable to extract the use condition from the obtained usage control data and control said reproduction unit to perform the reproduction within an extent to which the extracted use condition is satisfied (at least col. 11:1-40).

Claims 11-12, 39, and 45-47 do not, in substance, substantially add or define any additional limitations over claims 44, 7-10, 13-15, 17-18, and 23 and therefore are rejected for similar reasons.

### ***Response to Arguments***

Applicant's arguments with respect to claims 7-15, 17, 18, 23, 39, and 44-47 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. White et al and Lecomte et al, in addition to previously cited Miura and Getsin et al, are cited for disclosing pertinent information related to the claimed invention. Applicants are requested to consider the prior art reference for relevant teachings when responding to this office action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY G. TODD whose telephone number is (571)272-4011. The examiner can normally be reached on Monday - Friday 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571)272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/G. G. T./  
Examiner, Art Unit 2157

/ARIO ETIENNE/  
Supervisory Patent Examiner, Art Unit 2457